DOCUMENT RESUME

ED 449 597 EC 308 203

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TITLE ADHD and School Law.
INSTITUTION Appalachia Educational Lab., Charleston, WV.
SPONS AGENCY Office of Educational Research and Improvement (ED), Washington, DC.
PUB DATE 2000-07-00
NOTE 34p.
CONTRACT RJ96006001
AVAILABLE FROM Appalachia Educational Lab., P.O. Box 1348, Charleston, WV 25325-1348; Tel: 304-347-0400 (Voice); Tel: 800-624-9120 (Toll Free); Fax: 304-347-0487; E-mail: aelinfo@ael.org. For full text: http://www.ael.org/rel/policy/polbrief.
PUB TYPE Guides - Non-Classroom (055) -- Information Analyses (070)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Attention Deficit Disorders; *Civil Rights Legislation; Clinical Diagnosis; Compliance (Legal); *Educational Legislation; Elementary Secondary Education; *Eligibility; Federal Legislation; Federal State Relationship; Government Role; Government School Relationship; *Hyperactivity; State Government
IDENTIFIERS Americans with Disabilities Act 1990; *Individuals with Disabilities Education Act Part B; Rehabilitation Act 1973 (Section 504)

ABSTRACT

A review of the research and legal literature summarizes the status of attention deficit hyperactivity disorder (ADHD) under school law. Following a brief introduction, discussion of ADHD as a disability notes the impact of ADHD on overall functioning and provides a table of diagnostic criteria for subtypes of ADHD. The following section focuses on three relevant federal statutes: Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Individuals with Disabilities Education Act, Part B. The major portion of the paper discusses ten responsibilities of the states in implementing eligibility requirements for ADHD. These are: (1) locate, identify, and evaluate children disabled by ADHD; (2) make available a free appropriate public education; (3) develop and implement an appropriate individualized education program; (4) involve parents in decision making; (5) educate children in the least restrictive environment; (6) follow procedural safeguards; (7) ensure that professional personnel meet qualification standards; (8) include children with ADHD in state performance goals; (9) appropriately include disabled children in assessments; and (10) monitor suspension and expulsion rates. (Contains 110 references.) (DB)

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ED 449 597

ADHD and School Law

by

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July 2000

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This publication is based on work sponsored wholly or in part by the Office of Educational Research and Improvement, U.S. Department of Education, under contract number RJ96006001. Its contents do not necessarily reflect the views of OERI, the Department, or any other agency of the U.S. government.

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Contents

Introduction 1

ADHD as a Disability 1

Disability Statutes and ADHD 3

- Section 504 3
- ADA 4
- IDEA 4
  - Other health impairment 4
  - Specific learning disability 4
  - Emotional disturbance 5
  - Developmental delay 5

States' Responsibilities in Implementing Eligibility Requirements for ADHD 6

- Responsibility 1: Locate, Identify, and Evaluate Children Disabled by ADHD 8
- Responsibility 2: Make Available a Free Appropriate Public Education 9
- Responsibility 3: Develop and Implement an Appropriate Individualized Education Program (IEP) 14
- Responsibility 4: Involve Parents in Decision Making 17
- Responsibility 5: Educate Children in the Least Restrictive Environment 18
- Responsibility 6: Follow Procedural Safeguards 19
- Responsibility 7: Ensure That Professional Personnel Meet Qualification Standards 20
- Responsibility 8: Include Children with ADHD in State Performance Goals 21
- Responsibility 9: Appropriately Include Disabled Children in Assessments 21
- Responsibility 10: Monitor Suspension and Expulsion Rates 22

Summary 23

Notes 23

List of Tables

Table 1: Diagnostic Criteria for Subtypes of Attention-Deficit/Hyperactivity Disorder (ADHD) 2

Table 2: State Eligibility Requirements 7

Introduction

Attention-Deficit/Hyperactivity Disorder (ADHD or ADD*) sprang into public consciousness a few years ago and has gotten so much media play that some now dismiss its seriousness, calling it a fad diagnosis or an excuse for bad behavior. Recent medical research, however, has confirmed the validity of the diagnosis and has begun to reveal the disorder's biological, genetic, and neuropsychological underpinnings.[1,2,3,4,5]

Despite growing public awareness and scientific knowledge, children with ADHD do not always get the help they need to succeed, either academically or behaviorally. Instead, some educators and schools continue to treat them as "immature, unmotivated, lazy, inconsistent, [and] irresponsible," and blame them for their school failure, saying they just don't try hard enough or care enough to study and behave (p. 8).[6]

However, research shows that appropriate, comprehensive intervention and treatment can help children with ADHD to succeed in school.[1,6,7,8,9,10,11,12,13] In fact, schools are legally obligated by the Individuals with Disabilities Education Act (IDEA) to locate, identify, and evaluate all children suspected of having disabilities—including children who may be disabled by ADHD. For those determined to be eligible for services, schools must provide appropriate special education and related services to meet their unique needs.[14,15]

ADHD as a Disability

ADHD is a highly hereditary, neurobiological disorder characterized by age-inappropriate levels of inattention, hyperactivity, and impulsivity (see Table 1).[1,7,16] However, the impairment that results from ADHD can be much more profound than these observable characteristics suggest.[17]

Neuroimaging, genetic, and other scientific studies are leading researchers to believe that a core deficit in ADHD involves the brain's inhibitory system, impairing the child's ability to self-regulate and control behavior.[3,5,17,18] Barkley posits that the primary deficit of behavioral inhibition "disrupts executive functions and . . . impairs self-regulation"; thus, children with ADHD tend to be driven by the moment and less able to organize and control behavior with regard to the future[7,17] (p. xi).

* The American Psychiatric Association currently uses the term Attention-Deficit/Hyperactivity Disorder (ADHD) rather than Attention Deficit Disorder (ADD) for all types of the disorder—even the Predominantly Inattentive Type not characterized by hyperactivity. To avoid confusion, the federal regulations implementing IDEA include both terms, ADHD and ADD. In this document, one term—ADHD—is used to mean all types and/or versions of the disorder.

Table 1. Diagnostic Criteria for Subtypes of Attention-Deficit/Hyperactivity Disorder (ADHD)[1]

For a diagnosis of ADHD, criteria A through E must be met.

A. Must meet symptom threshold for ***subtypes (1) or (2) or (3).***

Subtype	Symptoms
(1) Predominantly Inattentive Type	Six or more symptoms of inattention present for at least six months **to a degree that is maladaptive and inconsistent with developmental level** ***Inattention*** • often fails to give close attention to details or makes careless mistakes • often has difficulty sustaining attention • often does not seem to listen when spoken to directly • often does not follow through on instructions and fails to finish work • often has difficulty organizing tasks and activities • often avoids dislikes or is reluctant to engage in tasks that require sustained mental effort • often loses things necessary for tasks or activities • often easily distracted by extraneous activities
(2) Predominantly Hyperactive-Impulsive Type	Six or more symptoms of hyperactivity-impulsivity present for at least six months **to a degree that is maladaptive and inconsistent with developmental level** ***Hyperactivity*** • often fidgets with hands/feet or squirms in seat • often leaves seat in situations where remaining seated is expected • often runs about or climbs excessively when inappropriate to do so (in teens or adults, may be limited to subjective feelings of restlessness) • often has difficulty playing or engaging in leisure activities quietly • is often "on the go" or often acts as if "driven by a motor" • often talks excessively ***Impulsivity*** • often blurts out answers before questions have been completed • often has difficulty awaiting turn • often interrupts or intrudes on others (e.g., butts into conversations or games)
(3) Combined Type	Six or more symptoms of inattention **and** six or more symptoms of hyperactivity-impulsivity present for at least six months **to a degree that is maladaptive and inconsistent with developmental level**

B. Some symptoms caused impairment ***before age seven***.

C. Some impairment present in ***two or more settings*** (e.g., home and school).

D. There must be ***clear evidence of clinically significant impairment*** in social, academic, or occupational functioning.

E. Symptoms are ***not better accounted for by other disorders***.

1. Adapted from the *Diagnostic and Statistical Manual of Mental Disorders (Fourth Edition)*. (1994). Washington, DC: American Psychiatric Association.

Besides their role in self-regulation, executive functions are thought to preside over *all* information processing tasks. By disrupting executive functions, ADHD causes global impairment across multiple neuropsychological domains—affecting cognitive, social, emotional, behavioral, and motor functions necessary for success in school, work, and life.[19] Working memory, organization, planning, problem solving, motivation, social skills, emotional regulation, hindsight, foresight, internalization of speech, rule-governed behavior, volition, willpower, self-discipline, and even sense of time can be affected by ADHD.[1,3,5,7,10,17,19] ADHD therefore presents a constellation of risks for a variety of problems, including school failure, social rejection, antisocial behavior, substance abuse, psychiatric disorders, and involvement with the juvenile justice system.[1,5,7,18,20,21,22,23]

A longitudinal study that is following children with ADHD into adulthood shows continued negative effects on employment, relationships, incarceration rates, parenthood, driving records, and even survival rates.[24,25,26] The poor outcomes associated with undiagnosed, untreated, and undertreated ADHD "provide a strong argument for the recognition and treatment of ADHD in childhood" (p. 431).[27]

Disability Statutes and ADHD

Children with disabilities are protected by three federal statutes: Section 504 of the Rehabilitation Act of 1973 (Section 504); the Americans with Disabilities Act of 1990 (ADA); and the Individuals with Disabilities Education Act, Part B (IDEA). The Office for Civil Rights in the U.S. Department of Education enforces the provisions of Section 504 and Title II of the ADA with respect to school districts, and the Department of Education administers IDEA.

To provide information regarding the applicability of IDEA and Section 504 to children with ADHD, the Department of Education issued a Policy Clarification Memorandum in 1991 that addressed, among other matters, state and local schools' responsibilities under IDEA to locate, identify, and evaluate children suspected of having ADHD (known as "child find") and to provide eligible children a free appropriate public education, including special education and related services, to meet their unique education needs.[15] This responsibility was clarified further in the final regulations implementing the 1997 Amendments to IDEA, which added ADD and ADHD to the list of impairments that could qualify a child as eligible for special education services under the "Other Health Impairment" category of Part B of IDEA.[28,29]

Section 504

Children may be covered by Section 504 and therefore entitled to receive a free appropriate public education under this section if their ADHD substantially limits a major life activity, such as learning. Section 504 prohibits recipients of federal financial assistance from discriminating against individuals with disabilities on the basis of disability. It requires public schools to provide appropriate educational services to children who are considered disabled under Section 504, whether or not their ADHD renders them eligible for special education

services under IDEA. Therefore, for children not eligible for services under IDEA, Section 504 would require schools to provide appropriate supports and modifications in regular classrooms, such as help with note taking and changes in assignments and testing procedures.

ADA

The Americans with Disabilities Act prohibits discrimination against individuals with disabilities on the basis of disability at work, at school, and in public accommodations. Unlike Section 504, the ADA applies not just to entities that receive federal funds.[30] ADA has been interpreted as incorporating many of the substantive requirements of Section 504. Therefore, school districts meet their ADA obligations to educate disabled students by complying with the free appropriate public education requirements in Section 504. Other parts of the ADA apply to private nonsectarian schools, day care, and postsecondary institutions.[31]

IDEA

IDEA guarantees that states make available a free appropriate public education to children with disabilities in mandatory age ranges. To be eligible for special education services under Part B of IDEA, children with ADHD must be evaluated as having one or more of the impairments specified in Part B and, because of the impairment, be found to need special education and related services.[28] In other words, a diagnosis of ADHD from a physician is not alone sufficient to render a child eligible for services under Part B—the ADHD must be found to adversely affect a child's educational performance. Children with ADHD may be eligible for services under several of IDEA's disability categories, depending on their unique characteristics and identified educational needs.[15]

Other health impairment. Most children receiving special education services for ADHD alone will likely be classified as "Other Health Impaired," since the regulations implementing IDEA now list ADD and ADHD as conditions that can make a child eligible under this category. Children with ADHD may meet the criteria for this category when their "heightened alertness to environmental stimuli . . . results in limited alertness with respect to the educational environment," impairing school performance.[32]

Specific learning disability. Children with ADHD may be eligible for special education under this category if they have coexisting specific learning disabilities. However, in some cases, ADHD alone could generate the type of impairment that would cause a child to meet criteria under this category. IDEA defines "specific learning disability" as a disorder in one or more of the basic psychological processes involved in understanding and using language as manifested by an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Minimal brain dysfunction is an example of a condition that would render a child learning disabled, and was in fact the term for ADHD during most of the 1960s. Recent brain-imaging studies, as well as new understanding about ADHD's effect on executive functions (and hence on information processing), underscore this category's continuing applicability and relevance for children with ADHD.[3,5,17,18,30]

Emotional disturbance. Children with ADHD sometimes have coexisting emotional disorders that can qualify them for special education services. To be eligible under this category, a child must exhibit "one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance": an unexplained inability to learn or to form and maintain satisfactory interpersonal relationships with teachers and peers, inappropriate behavior and feelings, general depression, and physical symptoms or fears resulting from personal or school problems.[33]

ADHD often coexists with mental and emotional disorders.[22] Some studies show a high overlap (more than 20 percent) with bipolar disorder—a major but treatable mental illness that, like ADHD, tends to run in families.[34,35,36,37] In addition, 20 to 30 percent of children with ADHD experience anxiety disorders and up to 75 percent experience depression.[20,21]

Developmental delay. The 1997 Amendments to IDEA offer a new option for serving children aged 3 through 9 (or a subset of that range) if the state has adopted the term "developmental delay" and the local education agency (LEA) elects to adopt and use that term. Under this option, states and LEAs may choose to provide special education services for children with ADHD in this age range if they exhibit a delay in physical, cognitive, communication, emotional, social, or adaptive development and need special education and related services to address those deficits.[38]

Children with ADHD often appear immature for their age. As a result, educators with inadequate knowledge about the disorder may recommend grade retention in the hope that the child just needs extra time to catch up to peers.

Studies of children with ADHD with normal IQs have revealed below-average scores on the Vineland Adaptive Behavior Scale—an assessment used to identify developmental delays.[5,39] The children scored poorly in subtests of socialization, communication, and daily living.[40]

Finally, social failure is so prevalent with ADHD that it is considered to be characteristic of the disorder.[41] Barkley[7] reports that children with ADHD appear "emotionally immature," and "lag behind others . . . as much as 30 percent or more" (pp. 30, 46). Because research on ADHD is now focusing not on attention but on deficits of behavioral inhibition and self-regulation, he suggests that ADHD should be renamed "developmental disorder of self-control" (p. 53).[7]

States' Responsibilities in Implementing Eligibility Requirements for ADHD

Under IDEA, state education agencies (SEAs) must exercise general supervision over all programs for children with disabilities administered within the state and have ultimate responsibility for ensuring that a free appropriate public education is made available to disabled students in mandatory age ranges. They may choose to do this one of three ways: by providing services directly, by contracting for services, or by delegating responsibility to LEAs. Usually, LEAs have the direct responsibility to implement state and federal regulations and to ensure that an appropriate education is provided to a child, as described in a child's individualized education program (IEP). However, if LEAs fail to do so, states must assume this responsibility, either directly or through contracts with others.

The 1997 Amendments to IDEA offer new hope for children with ADHD whose school performance suffers due to associated academic and behavioral problems. Through its comprehensive approach to meeting children's needs; its attention to behavior as well as academics; its support for schools and parents; and its focus on participation in the general curriculum, accountability, and results, IDEA aims "to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities."[42] To accomplish this purpose, Congress added several new requirements that states must meet to be eligible for Part B of IDEA funds. SEAs must now demonstrate to the U.S. Secretary of Education that policies and procedures are in place to ensure that these requirements are met (Table 2).[43]

To meet IDEA's new eligibility requirements (see Table 2) as applied to children with ADHD, states must ensure that schools (1) locate, identify, and evaluate children disabled by ADHD in public and private schools (including parochial schools); (2) make available a free appropriate public education to children with ADHD who are determined to be eligible for services under Part B; (3) develop and implement an IEP designed to meet the child's educational needs, and consider, if appropriate, the need for positive behavioral interventions for behavior that impedes the child's learning or that of others; (4) involve parents in decisions about evaluation, eligibility, placement, and IEPs; (5) educate children with ADHD with nondisabled children in the regular education environment to the maximum extent appropriate; (6) afford eligible children and their parents the procedural safeguards outlined in IDEA; (7) ensure that professional personnel who provide special education and related services to children with ADHD meet applicable state qualification standards; (8) include children with ADHD in state performance goals; (9) include children with ADHD in general state and districtwide assessment programs with appropriate accommodations, where necessary; and (10) monitor suspension and expulsion rates for children with ADHD receiving special education services, as compared with rates for nondisabled children. The remainder of this paper discusses each of these 10 eligibility requirements as it might apply to children with ADHD.

Table 2. State Eligibility Requirements[1]

To be eligible for assistance under Part B of IDEA, states must have policies and procedures in place to ensure that

- a free appropriate public education (FAPE) is made available to all disabled children in mandatory age ranges, including those who are suspended or expelled from school;
- a goal is established to provide full educational opportunity to all children with disabilities aged birth through 21;
- children with disabilities who attend public and private (including parochial) schools are located, identified, and evaluated to determine if they have disabilities and need special education and related services;
- an individualized education program (IEP) is developed and implemented for children with disabilities and for children aged three through five, or—at the discretion of the state education agency (SEA) a 2-year-old child with a disability who will turn age 3 during the school year—an individualized family service plan, in lieu of an IEP, if agreed to by the child's parent and the agency and if consistent with state law;
- children with disabilities are educated with nondisabled children in regular classrooms (the least restrictive environment) to the maximum extent appropriate;
- children and parents' rights are protected by procedural safeguards, including providing testing and evaluation materials and procedures that are free from cultural or racial bias;
- evaluations use a variety of tools and assessment strategies to determine if a child has a disability and to assess the child's educational needs;
- confidentiality of any personally identifiable information that is collected, used, or maintained under Part B of IDEA is protected;
- children receiving early intervention services under Part C who will participate in preschool programs assisted under Part B have a smooth transition to those programs;
- provision is made for providing special education and related services to children with disabilities in private (including parochial) schools, consistent with their numbers and location in the state;
- all educational programs and services for children with disabilities, including programs and services provided by other agencies, are under the general supervision of the persons in the SEA responsible for the education of children with disabilities;
- interagency agreements and coordination are established between the SEA and noneducational public agencies so that services needed to ensure a FAPE are provided;
- local education agencies are provided notice and a hearing before states can rule them to be ineligible for special education funds;
- a comprehensive system of personnel development is in place to ensure an adequate supply of qualified special education, regular education, and related services personnel;
- standards are established and maintained to ensure that personnel necessary to carry out the purposes of IDEA are appropriately and adequately prepared and trained;
- performance goals and indicators are established for children with disabilities consistent, to the maximum extent appropriate, with other goals and standards established by the State for all children in regular education and that indicators, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;
- children with disabilities are included in general state and district-wide assessment programs with appropriate accommodations, where necessary;
- Part B of IDEA funds are used to supplement the level of federal, state, and local funds expended for special education and related services for children with disabilities, and in no case to supplant those federal, state, and local funds;
- the State will not reduce state financial support for special education and related services;
- opportunities exist for public hearings and comments available to the general public, including individuals with disabilities and parents of children with disabilities, before policies and procedures related to compliance with the requirements of Part B of IDEA are adopted;
- a state advisory panel comprised of a majority of individuals with disabilities and/or their parents is established to provide guidance on policy matters related to special education and related services for children with disabilities; and
- the State examines data to determine if significant discrepancies are occurring in the rate of long-term suspension and expulsion for children with disabilities among LEAs in the state, as compared to the rates for nondisabled children in those agencies.

1. IDEA §612 and 34 C.F.R. §300.110-§300.284 (Subpart B, State and Local Eligibility).

Responsibility 1: Locate, Identify, and Evaluate Children Disabled by ADHD

The *child find* provisions of IDEA require states to locate, identify, and evaluate children with disabilities in public and private schools (including parochial schools).[44] The purpose of evaluation is to decide if the child has a disability and to determine the child's educational needs.

To apply these provisions to children with ADHD, LEAs and educators first need to know—and many still do not—that children with ADHD may be eligible for services under IDEA, Section 504, and Title II of the ADA or are covered by Section 504 and Title II of the ADA if they do not need special education. Next, they need to be able to recognize ADHD's symptoms and know school procedures for referral and evaluation. Because IDEA requires parents' informed consent before an evaluation is conducted, teachers may need to provide information to parents about ADHD, how it affects learning and behavior, why they want to refer the child for evaluation, and how special education or Section 504 services can help address the child's problems in school.

Finally, schools should follow recommended best practices for identification and evaluation. The American Academy of Pediatrics recommends that the diagnosis of ADHD be conducted by a clinician familiar with child development and behavior disorders using criteria set forth in the American Psychiatric Association's DSM-IV.[1,16] The diagnostic process involves an examination of the child's medical history, physical and mental health, and school records. Medical services that may be needed to determine medically related disabilities are provided as related services under IDEA, but such services must be for diagnostic and evaluative purposes only.

To aid in diagnosis, the clinician will often ask parents and teachers to rate the child's behavior using a variety of standardized rating scales.[10] Cognitive instruments such as achievement and IQ tests—while helpful for many reasons such as developing education plans and identifying other associated conditions—do not provide adequate information to diagnose ADHD, to assess its impact on global functioning, or to develop comprehensive interventions to accommodate and treat it.[10] IDEA now specifies that evaluations cover all areas of suspected disability—assessing the relative contribution of cognitive, behavioral, social, emotional, physical, and developmental factors, as well as the child's performance in the general curriculum—as a basis for developing the IEP. Evaluation measures must also be comprehensive enough to identify all service needs whether or not they are commonly linked to a disability category, and *no single instrument can be used to determine disability status or education needs.*[45] Since ADHD impairs executive functions affecting multiple domains and usually coexists with other cognitive, emotional, and behavioral conditions, the new evaluation requirements are especially pertinent to the disorder.

Evaluators must make sure that assessment measures are valid, reliable, free from racial and cultural bias, and administered in a child's native language, unless clearly not feasible. In drafting the 1997 Amendments to IDEA, Congress responded to concerns that poor children and minorities, including African Americans and Hispanics, may be overidentified for special education.[46,47] Some studies suggest that these same economic and minority groups also may be overidentified as having ADHD and coexisting conditions such as oppositional defiant and

conduct disorders, while girls may be underidentified.[21,48,49] Other researchers, however, think that underidentification and undertreatment is more of a problem, and that faulty predispositions, prejudice, and stereotypes may cause African American males who exhibit ADHD symptoms to instead be erroneously labeled as conduct or behavior disordered—conditions having more negative connotations and more likely resulting in restrictive and segregated placements.[50] Since the DSM-IV criteria for ADHD were established using predominantly Caucasian males, cultural and gender differences could be at play in issues surrounding identification.[51]

Parents must be involved in decisions about their child's eligibility for special education services. Though schools are responsible for providing needed assessments, parents may bring information regarding the child's disability to eligibility discussions. If parents disagree with the evaluation results obtained by the district, they may request an independent educational evaluation to be performed at public expense; schools must either pay for the evaluation requested by the parent or initiate a due process hearing to show that the school's evaluation was appropriate.[52] Parents of children with ADHD sometimes seek diagnostic testing and treatment outside of school and so may have pertinent, valuable information to contribute.

Because of public concerns about the possible overdiagnosis of children with ADHD and the overprescription of stimulant medications such as Ritalin, the American Medical Association's (AMA) Council on Scientific Affairs analyzed studies of school children and medication. The Council found little evidence of either incorrect diagnosis or overprescription of medication but recommended the following best practices, which the AMA adopted as policy in 1997:

- the use of "standardized diagnostic criteria . . . such as the American Psychiatric Association's DSM-IV, as part of a comprehensive evaluation" for ADHD
- "the use of individualized therapeutic approaches for children diagnosed as having ADHD, which may include pharmacotherapy, psychoeducation, behavioral therapy, school-based and other environmental interventions, and psychotherapy as indicated by clinical circumstances and family preferences"
- closer work "with schools to improve teachers' abilities to recognize ADHD and appropriately recommend that parents seek medical evaluation of potentially affected children" (p. 1106)[1]

Responsibility 2: Make Available a Free Appropriate Public Education

States and school districts must make a free appropriate public education (FAPE) available to children with ADHD in mandatory age ranges, including children with ADHD who are suspended and expelled from school. *Appropriate* can be understood in relation to the design of a program as reflected in the IEP in accordance with each child's individual needs and a state's education standards. In the 1997 Amendments to IDEA, Congress aimed to strengthen special education by emphasizing high expectations for children with disabilities—assuming their participation in the general curriculum offered to nondisabled children and in general state and districtwide assessments, with appropriate accommodations and modifications, as necessary,

and including them in other academic, nonacademic, and extracurricular activities, improvement efforts, and measures of school accountability.[53]

Courts have ruled certain IEPs to be inappropriate due in part to inadequate learning goals. The Supreme Court ruled unanimously in *Florence County School District No. 4 v. Carter* that courts can order school districts to reimburse parents for private school tuition and related expenses if a court or hearing officer finds that the education offered to the child by the public agency is inappropriate and that the education at the school selected by the parent is otherwise proper.[54,55] The case involved reimbursing private school expenses to the parents of a teenager with a learning disability and ADHD. School evaluations at first failed to identify either condition and misdiagnosed her as "lazy, unmotivated, and a slow learner" who should "work harder."[55] After the child's problems were finally identified and she was found to be eligible for special education services, her parents rejected the school's IEP because they felt its achievement goals were inadequate—four months' progress in reading over the course of one school year.[56]

IDEA requires schools to make available a free appropriate public education to disabled children, including those who are suspended or expelled from school.[57] The final regulations implementing IDEA specify that such services need not be provided during the first 10 school days of a child's removal from school in a given school year, if services are not being provided to children without disabilities who have been similarly removed. However, beginning with the 11th day that a child is removed in a school year, services must be provided to the extent necessary to enable the child to appropriately progress in the general curriculum and to appropriately advance toward achieving the goals in the child's IEP. If the removal is not for more than 10 consecutive school days and does not constitute a change of placement, the child's special education teacher, in consultation with school personnel, determines the extent to which services are necessary to meet this standard. If the removal is for a longer period of time, for behavior that is determined not to be a manifestation of the student's disability, the IEP team makes the services determination.[58] Failure to provide an appropriate public education for children with ADHD under these circumstances could subject SEAs and LEAs to potential litigation. This is important information for school disciplinary officers, since children with ADHD have been found to have high rates of suspension and expulsion.[21,59] Because of discipline concerns, Congress now requires states to monitor long-term suspension and expulsion rates for students with disabilities.

The U.S. Supreme Court, in *Honig v. Doe*, ruled that IDEA prohibits state or local authorities from unilaterally excluding disabled children from the classroom for behavior associated with their disabilities.[60] However, because of public concerns about school safety, IDEA now allows the following options for dealing with serious behavior infractions while protecting a child's right to an education and ensuring essential rights and protections for children with disabilities and their parents: (1) suspension for up to 10 school days for separate incidents of misconduct in the same school year, if a nondisabled child would be similarly removed and the removal would not constitute a change of placement; (2) placement in an interim alternative education setting for up to 45 calendar days for certain weapon and drug offenses; and (3) and placement by a hearing officer in an interim alternative education setting for up to 45 calendar days if the school can show that maintaining a child in the current placement is *substantially* likely to result in injury to the child or to others.[61]

Removing a child from the current placement for more than 10 consecutive school days—or for more than 10 cumulative days in a school year if the series of removals constitutes a pattern—is considered a change of placement.[62] As soon as a school decides to take action to change a child's placement, parents must be notified and provided information about procedural safeguards under the law. Within 10 calendar days of disciplinary actions that change a child's placement, the IEP team and other qualified personnel must meet to determine the relationship between the child's behavior and the disability.

To determine if a relationship exists between the child's disability and the behavior subject to discipline (i.e., a manifestation determination), the IEP team—which includes the child's parents—must first consider all relevant information, including evaluations, diagnostic results, and other information provided by the parents; observations of the child; and the child's IEP and placement.

To find that *no* relationship between the disability and the behavior exists, the IEP team must determine that the IEP and placement were appropriate in relation to the behavior; that special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the IEP and placement; that the child was able to understand the effects and consequences of the behavior; and that the child was able to control the behavior.[63] If the IEP or services are found to be deficient, then the school must take immediate steps to correct the problem. The U.S. Department of Education has alerted schools that repeated discipline problems may indicate that a child's services need to be reviewed or changed."[60]

Children with ADHD may be less responsive than other children to consequences—reinforcements or punishment—and they characteristically lack perspective regarding the effects of their behavior.[7] Barkley says "hyperactive children appear to show little awareness of their own behavior and its immediate consequences and implications, or even of the ways in which such behavior gets them in trouble" (p. 22).[13]

As previously discussed, ADHD is increasingly being viewed by researchers as a disability of self-regulation and control.[3,5,7,17,27] Because of neurobiological deficits related to ADHD, a child may be able to recite the rules and the consequences for breaking them but still be unable to inhibit or control behavior to comply with them.[7,64] Discipline systems that rely chiefly on threat of punishment to modify behavior assume that children have fully functional "brakes" and a certain capacity for self-reflection; such systems are therefore less effective for children with ADHD.

If misconduct *is* related to the disability, the child cannot be suspended for more than 10 consecutive days; however, the IEP team can review the child's placement, if needed, and change it to an appropriate placement, in keeping with procedural safeguards. If the misconduct is determined *not* to be related to the disability, the child can receive the school's usual disciplinary measures, as long as educational services are provided to the child in accordance with regulations regarding the provision of a FAPE [34 C.F.R. §300.121(d)], discussed earlier.[65]

Likewise, before a hearing officer can order a child to an interim alternative setting for posing a danger to himself or others, the school must present "*substantial* evidence that

maintaining the current placement . . . is *substantially* likely to result in injury to the child or others"[66] (emphasis added). The law defines "substantial" to mean "beyond a preponderance of the evidence."[67] This language upholds the Supreme Court's decision in *Honig v. Doe* and places the burden of proof on the school. The hearing officer must also consider the appropriateness of the child's current placement; whether the school has made reasonable efforts to minimize the risk of harm in that placement, including the use of supplementary aids and services; and whether the interim alternative setting allows the child to continue to progress in the general curriculum, with the services and modifications described in the IEP that will enable the child to meet the goals set out in the IEP. The IEP team determines the appropriate alternative setting. Students placed in interim alternative settings for misbehavior must receive services and modifications to address the behavior so that it does not recur.[68]

If the parents disagree with a manifestation determination or with any decision regarding placement and request a due process hearing, the SEA or LEA shall arrange for an expedited hearing. The child must remain in the current placement, with suspension or expulsion delayed, until hearings are completed. However, if weapons, drugs, or risk of injury are involved, then the child remains in the interim alternative setting until the hearing officer renders a decision or until the disciplinary period expires, whichever comes first. If the disciplinary period expires before the hearing and the school believes a child to be a continued danger, then the school can request an expedited hearing.[69]

To promote safe learning environments for all children—and successful outcomes for children with ADHD—schools need to employ behavioral interventions that actively teach and reinforce appropriate behavior.[70] Either before or up to 10 calendar days after taking action that constitutes a change of placement, the school must convene the IEP team to plan a functional behavioral assessment and to develop a behavioral intervention plan. If such a plan already exists, the IEP team must modify it to address the offending behavior.[71]

Children with ADHD may require direct intervention and instruction to teach the social and daily living skills needed to interact appropriately with others, to meet school expectations for self-management, to increase compliance with rules, and to avoid behavior infractions. As the PTA explains: "To many people, discipline means punishment. But actually, to discipline means to teach. Rather than punishment, discipline should be a positive way of helping and guiding children to achieve self-control."[72]

Therefore, the primary focus of a positive, proactive behavior intervention plan should be to directly teach and reinforce appropriate academic and social behaviors and to prevent, remediate, ameliorate, or accommodate behaviors that might result in disciplinary infractions.[7,64,73,74] The plan should also define consequences for inappropriate behavior and include alternatives to out-of-school suspension and expulsion, such as restitution and school or community service.

Positive Behavioral Support (PBS) is one promising method for moderating misbehavior by attending to what causes and sustains it.[75,76] To design effective PBS strategies, the IEP team should first conduct a functional behavior assessment that

- operationally describes the problem behavior
- identifies antecedents or triggers, i.e., the times, events, and situations where the behavior occurs (and does not occur)
- identifies consequences that sustain or maintain the behavior
- develops hypotheses to predict when and where misbehavior occurs
- collects observation data to test accuracy of the hypotheses[77]

Once these data are gathered and evaluated, the IEP team can use the information to develop a Behavioral Intervention Plan. A comprehensive plan responds to both the antecedents and consequences (i.e., reinforcers) of identified behaviors and provides supports to prevent or modify them. Typically, a PBS intervention plan includes positive strategies, modifications to programs, and supplementary aids and supports. Considering the behavior, it employs any or all of the following techniques:

- manipulates or addresses the precursors and reinforcers of inappropriate behaviors
- teaches and reinforces appropriate, alternative behaviors
- modifies instruction and curriculum
- modifies the physical environment in which behaviors occur[76]

For example, a child with ADHD might often be reprimanded for loud, overly boisterous behavior. An analysis of the behavior might show that most incidents occur during unstructured times, such as recess, changing classes, assemblies, or lunch, but not during structured classroom activities. Some appropriate strategies could include teaching and practicing appropriate hall behavior, systematically rewarding improvement with praise or a token economy, supplying a counselor to teach self-management skills, arranging for structured activities after lunch, seating the child near the teacher during assemblies, or providing an escort to class.[78] For a child who acts out during independent seat work, a plan might include remediating skill deficits to reduce frustration, teaching alternate behaviors like how to ask for assistance, rewarding on-task behavior, simplifying assignments that are too difficult, and providing extra support such as tutoring.

Because children with ADHD have been shown to differ from controls in their sensitivity to reward and punishment, they may need more frequent and immediate feedback to modify behavior.[79] Reward schedules for appropriate behavior may need to be based on shorter increments of time than would be expected for the child's chronological age, and consequences for unacceptable behavior need to be clear, immediate, and not overly punitive. Also, since children with ADHD may be less able to generalize from one situation to another, the behavior plan should focus on particular situations that the child encounters during the school day.

Children with ADHD need to learn to be accountable for their behavior, so their educational programs should provide appropriate instruction and support to address their behavioral, social, and emotional—as well as cognitive—needs. But punishment without intervention—especially for behavior related to an impairment of self-control—is both unhelpful and inappropriate. As Accardo says:

> The first thing to accept about a child who has ADHD is that this child's brain functions differently. We won't be able to change how the brain functions, so we must modify our expectations. This does not mean lowering expectations; it does mean making allowances.[80]

Responsibility 3: Develop and Implement an Appropriate Individualized Education Program (IEP)

The purpose of the IEP is to put into place the program of instruction and services to address a child's education needs—specifically, the special education and related services and supplementary aids and services, including program modifications and supports for school personnel, to be provided to the child or on behalf of the child, that meet a child's unique needs and allow the child to be involved and progress in the general curriculum (that is, the same curriculum as for nondisabled students) and to progress toward education goals. The IEP provides the support a child needs to succeed academically and behaviorally while building the skills to enable the child to become as self-supporting as possible.

In the 1997 Amendments to IDEA, Congress expanded the requirements for IEPs. New requirements include statements of the child's present levels of educational performance and how the child's disability affects the child's involvement and progress in the general curriculum; a statement of measurable annual goals, including benchmarks or short-term objectives related to meeting the child's needs resulting from the disability so that he or she can be involved and progress in the general curriculum; a statement of the special education and related services, supplementary aids and services, program modifications, or supports for school personnel to be provided to the child or on behalf of the child to enable the child to meet annual goals and participate with nondisabled children in the general curriculum and to participate in extracurricular and other nonacademic activities; and any individual modifications needed for the child to participate in state and districtwide assessments.[81]

IDEA thus assumes a child's involvement and progress in the general curriculum with appropriate modifications and supports and requires an explanation in the IEP if the child does *not* participate with nondisabled peers in regular classes and the general curriculum. Likewise, the typical child with ADHD can be expected to participate in the regular education classroom with nondisabled peers with varying degrees of intervention, accommodation, program modification, and support throughout the school years.[11]

Children with disabilities are also expected to participate with nondisabled children in extracurricular and nonacademic activities. Some children with ADHD are excluded from school activities like field trips because of behavior—either teachers are concerned about their safety and conduct in public places or exclusion from the trip is used to punish earlier behavior infractions. However, since special education and related services are meant to ensure access to and participation in extracurricular and other nonacademic activities as well as the general curriculum, IEPs must contain either the accommodations and supports needed for inclusion in such activities or an explanation of why the child will *not* participate with nondisabled children in those activities.[82]

IDEA now requires children receiving special education services to be included in general state and districtwide assessments, so IEPs must include a statement of what modifications, if any, are needed for participation in those as well. Most children with ADHD can be expected to participate in all regular assessments, though many will need simple modifications (see section on assessment).

For children too impaired to participate in regular assessments, the IEP must state why the child cannot participate in the assessment (or part of the assessment) and how the child will be assessed. If IEP teams properly make individualized decisions about the participation of each child with a disability in general state or districtwide assessments—including the use of appropriate accommodations and modifications in administration and appropriate individual modifications—then alternate assessments should be necessary for a relatively small percentage of students with disabilities.[83]

IEPs must also include a statement of *measurable* annual goals, including benchmarks or short-term objectives, related to meeting needs that result from the disability to enable the child to be involved and progress in the general curriculum, or, for preschool children, to participate in appropriate activities. Parents are to be notified, as regularly as parents of nondisabled children are notified, about their child's progress toward the goals and whether the progress is sufficient to reach the designated annual goals. As in the Carter case, insufficient goals and progress have been contributing factors in court rulings against school districts for failure to provide an appropriate education.[54,55]

The parents and at least one of the child's regular education teachers (if the child is participating in the regular education environment) are to be part of the IEP team. In fact, parents must be involved in all decisions regarding their child's evaluation, placement, and IEP. Schools and parents may invite other persons with knowledge or special expertise regarding the child, including related services personnel, as appropriate, to IEP meetings as needed.[84]

In developing the IEP, the team must consider the child's strengths and the parents' concerns for enhancing their child's education; the results of the child's initial or most recent evaluation and, as appropriate, the results of the child's performance on any general state or districtwide assessments; the child's behavior, if it impedes the child's learning or the learning of others; the language needs of children with limited English proficiency; the provision of Braille instruction or the use of Braille for children who are blind or visually impaired, unless the IEP team decides otherwise after appropriate evaluations; communications needs, and in the case of children who are deaf or hard of hearing, the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs; and whether the child requires assistive technology devices and services.[85]

IDEA emphasizes the need to assess and address behavioral as well as academic concerns in developing education plans. For children with ADHD, behavior most likely will be an issue for the IEP—especially as the child moves into upper grades that demand increased self-regulation and maturity. Since ADHD impairs self-regulation and self-control, the IEP team should take proactive steps—as previously discussed—to build preventive strategies and positive

behavioral interventions into the education plan, as well as the supports that teachers and parents need to help implement it. The child's regular education teacher, to the extent appropriate, must take part in determining and developing any behavioral interventions.

Many children with ADHD can benefit from assistive technology as well. For example, handwriting and notetaking can be slow and laborious for a child with ADHD, interfering with the timely completion of assignments and causing the child to miss most of a teacher's discussion due to the mental energy required for scripting. For these students, the IEP could include provisions for tape recorders to capture class lectures and word processors with spell checkers to facilitate writing assignments. Simple technology such as headsets and books on audiotape can help children with ADHD remain focused on reading assignments while building reading competence and fluency.

Since many experts recommend multimodal treatment for ADHD, the IEP might provide related services such as diagnostic medical services, social services, psychological services, and parent counseling and training to assist families struggling to understand and manage a child's behavior. Parent training has been shown to be an effective treatment component for children with ADHD.[1,7]

Travel training may also be useful for children with ADHD who—because of disorganization, time impairment, or other behaviors associated with their disability—experience difficulty understanding directions, following schedules, changing classes, and generally getting from one place to another in an orderly fashion and on time. For such children, provisions in the IEP could include teaching the child to construct and follow a daily schedule; creating a reward system for getting to class on time without incident; or assigning an aide or a responsible student to escort the child to class.

Some children are diagnosed with ADHD in preschool, and so may enter kindergarten with an IEP or Family Service Plan. Since an early diagnosis may signal more severe impairment, schools should make sure that the IEP is reviewed and updated to ensure a smooth transition and needed supports as the child faces the increased cognitive and behavioral demands of kindergarten. Comprehensive and intensive interventions early on can help prevent a host of negative outcomes in later years.

Beginning at age 14, IEPs must include transition services pertaining to the child's course of study. No later than age 16, IEPs must address interagency linkages and responsibilities needed to prepare students for the transition to postsecondary education, employment, and independent living. For example, teens with ADHD could need help with time and money management, organizational strategies, self-advocacy, SAT preparation, and study skills appropriate for postsecondary education. Even college-bound teens may need to learn basic skills necessary for independent living, such as how to find information in a phone book, the classified section of the newspaper, a bus schedule, or a college catalog. As previously discussed, ADHD puts children at risk for social, emotional, psychiatric, and conduct problems that can affect job performance and continuing education and increase involvement with the justice system.[1,5,7,20,21,22,27] Adequate treatment and an appropriate IEP should mitigate such risks; however, the IEP team should consider linkages to social, health, and juvenile justice agencies, if

warranted, to ensure support for the complexity of issues confronting teenagers with ADHD. States must ensure that interagency agreements exist to facilitate coordination in providing required services.[86]

Responsibility 4: Involve Parents in Decision Making

In amending IDEA, Congress strengthened parent involvement and increased opportunities for parental input, while continuing to safeguard parents' rights.[87] Parents of children with disabilities or individuals with disabilities must comprise a majority on the State Advisory Panel, a body created to provide policy guidance concerning special education and related services. LEAs must ensure that parents are involved in school improvement plans to improve educational and transitional results for children in special education, and parents—particularly those from underserved and underrepresented groups—must also be part of school-based panels established to carry out duties related to the plans.[88] The public and parents must have access to all documents related to a school's eligibility for IDEA funds and compliance with regulations, and parents must be provided copies of documents related to their child, such as IEPs, evaluation reports, and eligibility determination.

As part of the IEP team, parents must be involved in decisions related to identification, evaluation, educational placement, and provision of a FAPE. Parents can initiate or must consent to initial evaluation for special education services. If parents refuse consent, schools can request a due process hearing or use mediation, if appropriate (except to the extent inconsistent with state law), if they believe that a child needs special education and related services. Parental consent for evaluation, however, does not imply parents' consent for placement.[89] For triennial reviews, schools must make a good faith effort to involve parents but do not have to go through due process if parents fail to respond to notification efforts. During both initial evaluation and triennial reviews, parents can present existing information, suggest what additional data may be needed, and request that other assessments be conducted to determine the child's disability status, performance level, and education needs. Parents can also invite others whom they feel have special expertise regarding their child to take part in IEP meetings as an IEP team member. When developing the IEP, the team must consider parents' concerns for enhancing their child's education.

Schools are urged to schedule IEP meetings at times convenient for parents or to arrange their participation through telephone or conference calls if they cannot be there in person. To ensure the involvement of deaf or non-English-speaking parents, IDEA requires schools to provide interpreters at meetings.

Parents must be notified of their child's progress toward meeting short-term and annual goals in the IEP as often as parents of nondisabled children are notified of their child's education progress. Parents must also be notified of procedural safeguards protecting their rights and the rights of their child to a free appropriate public education[90] (see Procedural Safeguards, below).

The new roles for parents could help promote the collaboration between home and school necessary to improve outcomes for children with ADHD, since ADHD may require closer

coordination between parents, physicians, and educators than "most other conditions affecting children" (p. 28).[12] In the past, uncertainty about eligibility for special education services, lack of information and understanding about the disabling characteristics of ADHD, and inappropriate treatment and services—including disciplinary actions—have all contributed to sometimes contentious relationships between parents and school personnel. The extent of parent involvement required by new provisions in IDEA is intended to help prevent such conflict and, most importantly, to improve the quality of services to the child to promote achievement and progress in the general curriculum. In addition, IDEA's new provisions for mediation could potentially help settle disputes before they escalate into lawsuits.

In dealing with parents, schools must keep in mind that because ADHD is largely hereditary and often coexists with learning disabilities such as dyslexia as well as social and emotional disorders, the parents themselves may have disability issues that present barriers to effective communication and collaboration. For example, even English-speaking parents may need assistance reading and understanding notifications such as procedural safeguards and consents for evaluation or they may have difficulty regulating emotions or expressing themselves in meetings. As a result, they may want to bring others whom they believe to have special knowledge or expertise regarding their child with them to meetings to advocate on their child's behalf. Others may choose to bring expert support to meetings as a first step in resolving disagreements, especially if they feel that school personnel are misinformed about ADHD, in violation of IDEA, or are noncooperative in developing solutions to problems. Many parents of children with ADHD have become so knowledgeable about the disorder and effective treatments that they can serve as valuable resources to teachers and schools.

Responsibility 5: Educate Children in the Least Restrictive Environment

IDEA expresses a strong preference that children with disabilities participate, with appropriate supplementary aids and services, in the general curriculum and in regular classes with their nondisabled peers. Children may be placed in more restrictive education settings only when "the nature or severity of the disability . . . is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."[87,91]

In the past, challenging behavior may have caused children with ADHD to be placed in resource rooms. By providing needed supports to the regular education teacher as well as addressing targeted behaviors through positive behavioral interventions, appropriate IEPs can help prevent such placements. However, the new emphasis on inclusion does not eliminate schools' need to provide a continuum of services and placements to meet individual needs—e.g., special classes, special schools, home instruction, and instruction in hospitals and institutions—though the reason for more restrictive placement must be explained in the child's IEP.[92,93]

Responsibility 6: Follow Procedural Safeguards

IDEA's procedural safeguards are designed to protect children's and parents' rights regarding matters related to identification, evaluation, educational placement, or the provision of FAPE to the child and to ensure parents' participation. Schools must provide parents a copy of a procedural safeguards notice on the following occasions: at the initial referral for evaluation and subsequent reevaluations, upon notification of IEP meetings, and when requests are made for due process hearings. The notice of procedural safeguards must explain in language parents can understand their rights pertaining to independent educational evaluation; prior written notice of proposed or refused actions pertaining to identification, evaluation, educational placement, or provision of a free appropriate public education to a child; parental consent; access to educational records; opportunity to initiate due process hearings; the child's placement during pending due process proceedings; procedures for students subject to placement in interim alternative education settings; unilateral placement by parents in private schools at public expense; mediation; due process hearings, including requirements for disclosure of evaluation results and recommendations; state-level appeals, if applicable; civil actions; attorney's fees; and procedures for complaints to states. Schools must provide parents with information about any available free or low-cost legal and other relevant services when due process hearings are initiated or if parents request such information.[94] *The failure of an education agency to follow these procedures is sufficient reason to rule that a disabled child has been denied a free appropriate public education.*[60]

IDEA's protections extend even to children who have not yet been determined eligible for special education services, if the school has prior reason to suspect that a disability may exist. Since many parents seek help outside of school for their hyperactive, impulsive children, a number of children in disciplinary hearings may have an existing diagnosis of ADHD. Schools may therefore need to become more proactive in helping children who are repeatedly disciplined for impulsive or seemingly irresponsible behavior; if prereferral strategies fail to correct the problem, then an evaluation for the presence of a disability such as ADHD should be considered.

Most parents are willing to work with schools if they feel that teachers and administrators are attempting to understand how ADHD affects their child, are making good faith efforts to help by implementing positive academic and behavioral interventions, and are following through on services agreed to in the IEP. On the other hand, schools can expect contentious or litigious relationships with parents if they allow children to be threatened, harassed, humiliated, or excluded for ADHD-related behavior; use punishment rather than positive interventions as the disciplinary tool of choice; and disregard the spirit and the letter of IDEA.

Responsibility 7: Ensure That Professional Personnel Meet Qualification Standards

IDEA's requirements that disabled students be involved and progress in the general curriculum and be educated, to the maximum extent appropriate, in regular education classrooms, with appropriate supplementary aids and services, make it imperative for *all* teachers to become knowledgeable about how to educate *all* students. The Department of Education's 1991 memorandum affirms that "steps should . . . be taken to train regular education teachers and other personnel to develop their awareness about ADHD and its manifestations and the

adaptations that can be implemented in regular education programs to address the instructional needs of these children."[15] SEAs have ultimate responsibility for ensuring that teachers have the needed training and support.

Teachers should know and follow school policies and procedures for administering and storing the medications that are sometimes part of ADHD's multimodal treatment and for reporting any unusual effects or symptoms to supervisors, parents, or professionals. More importantly, teachers should know a variety of both instructional and behavioral strategies to help children with ADHD succeed in the classroom.

Lack of teacher training is potentially tragic for students, who may fail because their teachers don't know how to help them learn or manage their behavior.[95] It could also expose SEAs and LEAs to unnecessary lawsuits or costly reimbursement to parents for private school tuition if courts or hearing officers agree that the public school has failed to provide an appropriate education.[96]

The Supreme Court's ruling in the Carter case speaks to schools and districts nationwide: few teachers and few schools know how to appropriately educate and serve children with ADHD. One survey of teachers revealed that 85 percent had taught children with ADHD, but the majority had received no training to do so. Of those who claimed specific training, the majority had received a *maximum* of three clock hours, and only 16 percent had been trained to use a variety of techniques.[97]

To remedy this problem, Virginia's General Assembly passed legislation requiring the Board of Education to provide professional development to teachers and school personnel about current issues in education, including ADHD.[98] The Assembly also passed a resolution requesting school divisions to assist children with ADHD so that they reach their potential and complete their schooling.[99]

Special educators may need in-service training on content and curriculum knowledge to help students meet general curriculum standards, even if students receive instruction in resource rooms rather than regular classrooms. Currently, "few special education teachers are prepared adequately to teach content areas," (p. 18)[53] but children and schools will now be accountable for performance on exit examinations (adopted by some states) and state and districtwide assessments.

Professional development activities often focus on academic and behavioral strategies, overlooking an important dimension of impairment for children with ADHD: social functioning.[100] The majority of children with ADHD experience peer rejection and social failure, increasing their risk for negative outcomes such as involvement in delinquent and antisocial behavior.[41,100,101,102,103,104]

Not only do children with ADHD elicit "an extremely negative response from members of the peer group," but in the classroom they also evoke "significantly more negative teacher feedback directed at all children in the room" (p. 236).[41] Professional development aimed at meeting children's social needs and improving social competence can increase positive, prosocial

classroom behaviors and make teachers more aware of children's difficulties with others and how they can help them.[100,105]

Responsibility 8: Include Children with ADHD in State Performance Goals

In keeping with its emphasis on improving student results, IDEA requires states to establish a system of performance goals and indicators for children with disabilities that is consistent with goals and indicators for nondisabled students and to report students' progress in meeting the goals. At a minimum, performance goals must include assessment results as well as graduation and drop-out rates.[106]

As a whole, children with ADHD fare poorly on performance measures. Their school failure rates are double to triple those of other students. One-third to one-half fail at least one grade and about 35 percent eventually drop out of school. Only 5 percent complete college, and longitudinal studies are beginning to document poor employment outcomes as well.[7,24,107] State assessments may more accurately measure students' impairment (e.g., disorganization, distractability, and executive dysfunction) than measure their knowledge. IDEA's focus on accountability and results aims to remedy such poor outcomes.

Responsibility 9: Appropriately Include Disabled Children in Assessments

Children with disabilities must now be included in state and districtwide assessments, with appropriate accommodations, where necessary. Assessment results must be disaggregated and reported to the public.

Children with ADHD may very well require testing accommodations to present an accurate picture of what they know. Most accommodations involve setting, scheduling, timing, presentation format, or response format: for example, a separate testing room, scheduling that coincides with medication dosage, extended time allotments, oral administration, and marking answers in test booklets. Other accommodations for children with ADHD might include reminders to stay on task or instruction in test-taking skills.[53,108]

Generally, accommodations allowed for testing should parallel those provided for instruction and these accommodations must be included in the student's IEP. Since many children with ADHD have coexisting conditions that also may require accommodations—for instance, dyslexia or learning disabilities—the IEP team should consider all such needs when choosing which testing accommodations to include in the IEP.

In their push to raise standards of learning, some states have adopted high-stakes tests for students such as minimum-competency tests, end-of-course or grade-promotion exams, and graduation exit exams. At this writing, 17 states have graduation tests and five more are planning to adopt them.[109] The limited body of research on the performance of students with disabilities indicates that they do not do well on such tests,[110] and children with ADHD may well be among them. Because of its impact on executive functions, ADHD is associated with deficits of working

memory and deficits involving storage and retrieval of complex verbal information, especially over long periods of time.[3,17,64] Some feel that heightened pressure to perform well on standardized tests is partially responsible for the increased use of stimulant medication in children with ADHD.[111] It remains to be seen how IDEA's requirements to include students with disabilities in state assessments and accountability measures will affect achievement, retention, graduation, and drop-out rates for children with ADHD; school-level rewards or sanctions; and lawsuits, especially if children do not receive appropriate testing accommodations. However, such data will certainly point out areas for improvement in services to children with ADHD.

Responsibility 10: Monitor Suspension and Expulsion Rates

State departments of education must now monitor suspension and expulsion rates among LEAs in the state to determine if rates for children with disabilities are disproportionate compared to rates for nondisabled children. If disproportionalities exist, then states must review and, if appropriate, revise policies, practices, and procedures that could be contributing factors, including those relating to the development and implementation of IEPs, use of behavioral interventions, and procedural safeguards.[112]

Discipline is an issue that generated considerable controversy in the reauthorization of IDEA. The public perceives that children with disabilities cannot be disciplined at school and that these students commit more serious infractions than nondisabled children. However, two studies have revealed otherwise. A study of public schools in Kansas found that "students with disabilities (were) more than twice as likely to be suspended/expelled as other students" and "there were no educationally relevant differences between acts leading to the suspension or expulsion of students with disabilities and those committed by other students" (p. i).[113] More significantly, students with behavior disorders were 11 times as likely and children with learning disabilities were 2.5 times as likely to receive this punishment as children without disabilities, raising questions about the effectiveness of IEPs and whether children are being improperly disciplined for behavior related to their disability. A second study looked at suspension rates in an eastern Kentucky school district and found that students with disabilities received 20 percent of the district's suspensions, even though they comprised just 14 percent of the student population.[114]

Children with ADHD have been found to have unusually high suspension and expulsion rates: one long-term study revealed that 46 percent had been suspended and 11 percent had been expelled.[115] These rates are not surprising, given current scientific thinking that the core deficit in ADHD impairs behavioral inhibition, willpower, self-regulation, and self-control. To compound the problem, 50 to 70 percent of children with ADHD exhibit oppositional behavior and 20 to 40 percent have the more serious conduct disorder. IEP teams should therefore insist that functional assessments be conducted at the time of initial evaluation—and triennial review, if necessary—to identify social, emotional, and adaptive deficiencies that could contribute to behaviors negatively affecting students' participation, performance, and progress in the general curriculum as well as their transition to postsecondary education, independent living, and employment.[116] Any assessed deficiencies or weaknesses should be addressed in the IEP and behavior intervention plan.

Summary

IDEA's new emphasis on achieving results holds promise for children with ADHD, whose needs have often been ignored or inappropriately addressed by schools. By comprehensively assessing and addressing their needs; involving and supporting their parents and teachers; and expecting their participation in the general curriculum, regular classrooms, assessments, and accountability and performance goals, IDEA should bring about improved outcomes for children with ADHD.

Because states are responsible for overseeing public education and for providing a free appropriate public education if local education agencies fail to do so, state education agencies and policymakers have a clear mandate to formulate, monitor, and implement policies and laws—including IDEA, Section 504, and ADA—to educate students with disabilities. So that the promise of the 1997 Amendments to IDEA is realized for children with ADHD, they additionally must be sure that the laws and policies are known and implemented in their state's schools.

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